

JOHNNIE P. SAYLORS

MAY 20, 1958.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 4461]

The Committee on the Judiciary, to which was referred the bill (H. R. 4461) for the relief of Johnnie P. Saylor, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6, strike out the figures and insert in lieu thereof "\$9,665".

Page 1, line 8, strike out "them" and insert "her".

Page 1, line 11, strike out "in excess of 10 per centum thereof".

The purpose of the proposed legislation is to pay the sum of \$9,665 to Johnnie P. Saylor, in full settlement of all claims against the United States for personal injuries sustained by her on October 26, 1953, as a result of being struck by a United States Army vehicle, near Dinglefing, Germany.

STATEMENT OF FACTS

The Department of the Army in its report dated January 22, 1958, addressed to the chairman of the committee gives in detail the history of this proposed legislation, and recommends favorable action provided it be amended reducing the amount from \$101,165 to \$9,665. After a careful review of the file and the different amounts as set forth in the claim, your committee is of the opinion that the Army recommendation is reasonable and therefore, concur in it, and the bill is amended accordingly. The committee has been advised by the author of the bill that no attorney is involved and the 10 percent provision is deleted. The report from the Army is as follows:

DEPARTMENT OF THE ARMY,
Washington, D. C., January 22, 1958:

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 4461, 85th Congress, a bill for the relief of Johnnie P. Saylor.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Johnnie P. Saylor, the sum of \$101,165, in full settlement of all claims against the Government of the United States for injuries sustained by them on October 26, 1953, as a result of being struck by a United States Army vehicle, near Dinglefing, Germany."

The Department of the Army has no objection to the enactment of this bill provided it is amended as hereinafter recommended.

On October 26, 1953, Mrs. Johnnie P. Saylor, wife of Col. John H. Saylor, United States Army, was a passenger in a United States Army sedan, driven by a United States Army enlisted man, proceeding south from Straubing, Germany, to Landshut, Germany. This official transportation had been authorized Mrs. Saylor to enable her to accomplish necessary administration in connection with occupancy of quarters at Landshut. During the course of this trip, at a point known as Dingolfing Cutoff, the Army sedan met a convoy of Army halftrack vehicles. The last vehicle in this convoy was a wrecker towing a disabled halftrack, the rear of which was suspended by the cable structure of the towing vehicle. As the Army sedan passed the wrecker, the cable gave way and the disabled halftrack fell onto the sedan, knocking it over an embankment. The sedan overturned several times during the course of its descent.

Subsequent to the accident, both drivers testified that the vehicles were not exceeding 15 to 20 miles per hour at the time of the incident, that they were forced close together by the narrow width of the road, but that the clearance appeared to be adequate and there was no indication of sway by the halftrack. Inspection revealed that the boom cable on the wrecker had broken, that the two side cables were still intact, but that as the halftrack had dropped about 1½ feet vertically, it could be pushed about 1 foot to either side. The driver of the wrecker had noticed a slight lurch just after the sedan had passed. The left front corner post of the sedan immediately in front of the left front door was sheared, indicating that it had been struck by a hard, sharp object.

Mrs. Saylor was rendered unconscious by the accident. She was taken to the United States Army dispensary in Straubing, from which she was evacuated that same day by helicopter to the United States Army Hospital in Munich, Germany. Her diagnosis at this hospital was as follows:

- "1. (8301) Dislocation, joint, left hip.
- "2. (8160) Fracture, simple, n. e. c., mandible.
- "3. (8160) Fracture, simple, n. e. c., maxilla.

- 4. (7932) Observation, surgical (probable fracture of skull).
- 5. (8210) Wound, lacerated, brain.
- 6. (8160) Fracture, simple, n. e. c., acetabulum, posterior hip, left."

On October 27, 1953, a closed reduction of the dislocation of her left hip was performed at this hospital and she was transferred to the 97th General Hospital, Frankfurt, for orthopedic surgery. The records of this facility reveal pertinently as follows:

"Physical examination revealed a fully conscious patient with hazy memory of the first 24 hours following her accident, well oriented. There was no evidence of upper motor neuron lesion on neurologic examination. There is deformity of the jaw and swelling and ecchymosis (black and blue marks) in the region of the left zygoma (cheek bone). There was no voluntary motion of any of the muscles below the left knee and there was no function of the hamstrings (tendons in the back of the knee). There was a subjective feeling of tingling in the lower one-third of the leg and foot in the stocking distribution. There was hypesthesia (diminished sensibility) in the dorsum of the foot and anesthesia posteriorly in the posterior tibial (shin) nerve distribution.

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"X-rays of the facial bones showed multiple fractures of the left zygoma (cheek bone) and maxilla (upper jawbone). The mandible (lower jaw) showed multiple linear fractures involving the body of the mandible on the left. The left hip showed a fracture, simple, complete through the posterior lip of the acetabulum (cup-shaped depression on the external surface of the hip bone, in which the head of the thigh bone fits) with slight displacement of fragments. Reduction of the zygoma and the mandible were done by the dental and ENT sections on October 29, 1953. The patient was placed in suspension traction for the left leg. Because of persistent severe pain and paresthesias (an abnormal spontaneous sensation such as burning, prickling or numbness) exploration of the sciatic nerve with removal of the bone fragments of the posterior lip of the acetabulum was done on November 17, 1953 (this was an operation lasting approximately 2½ hours). The sciatic nerve was found to be slightly thin at the notch and slightly swollen distal to this overlying the fracture fragment. There was moderate adherence of the nerve near the fracture site. The wound healed well and the patient's pain gradually diminished. On December 1 she was removed from traction and begun on physical therapy and preparation for crutch walking. By December 12, 1953, she was walking well with crutches and a left short-leg brace. The hamstrings presented demonstrated 50 percent strength and occasionally slight contraction of the gastrocnemius (calf muscle) was seen on the left by the physical therapist. There was an objective sensation of improved feeling in the skin of the leg. The patient is discharged to her home and was advised to use crutches without weight bearing on the left lower extremity for 6 months during which time follow-up X-ray examination of the hip should be done for changes of aseptic necrosis.

"Disposition (December 18, 1953): Discharge from hospital."

On July 11, 1955, subsequent to her return to the United States, Mrs. Saylor commenced physical therapy treatment at Brooke Army Hospital, San Antonio, Tex. A certificate furnished by the

orthopedic service at this facility, under date of June 5, 1957, stated pertinently as follows:

"On examination in the orthopedic clinic on July 7, 1955, she was found to have some weakness of the peroneal muscles and the anterior and posterior tibial muscles of the left leg. These muscles are the muscles which dorsiflex the foot, and this function was diminished because of the weakness of these muscles. In addition, she had weak extensors of the toes of the left foot.

"Patient was reevaluated in the orthopedic clinic on June 19, 1956, where she was again noted to have marked weakness of both the anterior tibial, posterior tibial, and peroneal muscles. She was wearing a spring-type brace to compensate for the weak muscles at this time. During this period of observation it was apparent that improvement of the muscles of the lower leg was slight; and inasmuch as approximately 2½ years had elapsed since the injury, further return was not expected. We, therefore, feel that this patient has as a residual of her injury a marked weakness of the muscles of dorsiflexion of the left foot including the anterior tibial, posterior tibial, and peroneal muscles. It is felt that this weakness is likely to be permanent and that this patient will require a spring brace to overcome the resulting 'drop foot.' "

Under date of October 24, 1955, Colonel Saylor submitted a claim to the United States Army in the amount of \$101,165. This claim was based upon the following estimates of expenses, anticipated or incurred:

- (a) Excess transportation costs of \$300 necessitated by the injury.
- (b) Medical expenses of \$265 incurred at civilian facilities for the period of September 1954, when she returned to the United States, to June 1955, when she rejoined her husband at San Antonio and again received medical care from the Army.
- (c) Services of a domestic in the amount of \$1,600 to perform household duties normally accomplished by Mrs. Saylor.
- (d) Estimated medical expenses of \$1,500 per year for the remaining 30 years of her life expectancy. This was based upon the alleged fact that "the current trend of the policy of the (Army) Medical Service for dependents indicates a discontinuance of such service." This estimated sum totaled \$45,000.
- (e) Estimated services of a domestic to perform household duties for the next 30 years at \$150 per month, including room and board, a total of \$54,000.

The claim was considered pursuant to the act of July 3, 1943 (57 Stat. 372), now codified (10 U. S. C. 2733), which was the only statutory authority available to the Department of the Army for administrative consideration of subject claim. It was denied as it had not been submitted within 1 year of the date of occurrence of the injuries as then required by the act of July 3, 1943. Mrs. Saylor was also informed that recovery under the act of July 3, 1943, was limited to reasonable medical, hospital, and burial expenses actually incurred, and, consequently, even if the claim had been seasonably filed, compensation could only have been allowed for the \$300 expended in transportation in obtaining medical treatment and for the \$265 expended for civilian medical care. Mrs. Saylor appealed the matter to the Secretary of the Army, but the appeal was denied by letter dated May 1, 1956.

The act of March 29, 1956 (70 Stat. 60), amended the act of July 3, 1943, and removed the proviso limiting recovery to reasonable medical,

hospital, or burial expenses actually incurred. The amendment afforded no relief to Mrs. Saylor, as it related only to claims arising after March 29, 1956.

The evidence of record fails to disclose whether the defect in the cable supporting the towed vehicle would have been discovered in the exercise of reasonable care; thus, it cannot be assumed that the incident resulted from the negligence of an employee of the United States Government. However, the accident is properly characterized as "incident to noncombat activities" (10 U. S. C. 2733) of the Army and thus any injuries arising therefrom are justifiably compensable by the United States Government.

As no other legal method is available whereby Mrs. Saylor may receive equitable compensation for the injuries sustained, the Department of the Army has no objection to the enactment of private relief legislation to achieve this end. Furthermore, Mrs. Saylor's failure to seasonably file a claim should not prejudice this bill, as it did not hamper the establishment of the facts surrounding the accident or the extent of her injuries.

Subject bill provides for the payment of \$101,165, the exact amount of compensation requested in the claim of October 24, 1955. This claim was excessive in that it included an estimated \$45,000 for medical care based upon the assumption that the free Army medical service for dependents would be discontinued. It is not contemplated by this Department that the present policy of affording free definitive medical treatment to dependent wives and widows of active, retired, or deceased officers of the United States Army will be discontinued. Fifty-four thousand dollars of the claim represented an anticipated expenditure for domestic servants to perform household duties for the next 30 years. It would appear that this residual effect of her injury, characterized as "drop foot," while causing some fatigue upon exertion or prolonged standing, and necessitating the wearing of a brace, should not prevent Mrs. Saylor from performing normal housekeeping chores. Consequently, it would not appear that domestic maid service for the next 30 years may properly be regarded as an expenditure resulting from the accident in question.

The remaining \$2,165 of the claim, representing actual out-of-pocket expenses already incurred by virtue of Mrs. Saylor's injury, is a proper item for compensation. It would also appear that an award of approximately \$4,000 would represent equitable compensation for the permanent weakness in the muscles of dorsiflexion of Mrs. Saylor's left foot and which requires the wearing of a brace. Mrs. Saylor suffered considerable pain and suffering resulting from her broken jaw and cheek bones and her leg injuries and it would appear that an additional sum of \$3,500 would be justified as compensation for these elements. The Department of the Army would thus have no objection to the enactment of this bill provided it be amended to grant an award of \$9,665, instead of the \$101,165 award presently provided.

The cost of this bill, if enacted in its present form, would be \$101,165, or, if amended as herein recommended, would be \$9,665.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.



